

1 W. Paul Schuck, State Bar No. 203717  
2 *pschuck@bztm.com*  
3 Sony B. Barari, State Bar No. 243379  
4 *sbarari@bztm.com*  
5 BARTKO, ZANKEL, BUNZEL & MILLER  
6 A Professional Corporation  
7 One Embarcadero Center, Suite 800  
8 San Francisco, California 94111  
9 Telephone: (415) 956-1900  
10 Facsimile: (415) 956-1152

11 Attorneys for Plaintiff/Counterclaim Defendant  
12 NATERA, INC. and Counterclaim Defendant  
13 DNA DIAGNOSTICS CENTER, INC.

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1 Plaintiff and Counterclaim Defendant Natera, Inc. (“Natera”) and Counterclaim Defendant  
 2 DNA Diagnostics Centers, Inc. (“DDC”) hereby respond to Sequenom, Inc.’s Motion to Clarify or  
 3 Alternatively, Modify Protective Order (*Ariosa* Dkt. 175) and hereby join in *Ariosa* Diagnostics,  
 4 Inc.’s Opposition to Sequenom, Inc.’s Motion to Clarify or Alternatively, Modify Protective  
 5 Order. (*Ariosa* Dkt. 187.)

6 **PRELIMINARY STATEMENT**

7 Once again, under the guise of “clarification,” Sequenom attempts to change the clear  
 8 meaning of the agreed-upon Protective Order in this litigation. The Protective Order clearly bars  
 9 an attorney with access to “OUTSIDE ATTORNEYS EYES ONLY INFORMATION” from being  
 10 involved in “directly or indirectly drafting, amending advising, or otherwise affecting the scope of  
 11 maintenance of patent claims” before the Patent and Trademark Office (“PTO”). Nonetheless,  
 12 Sequenom seeks to have the Court redefine this language to allow its attorneys who have enjoyed  
 13 access to the other parties’ most confidential information to participate in an *inter partes* review  
 14 (“IPR”) before the PTO. In an IPR, a party can amend or draft new claims, as well as argue for  
 15 maintaining the validity of existing claims. By any reasonable reading, participation in an IPR  
 16 runs afoul of the provisions of the Protective Order.

17 Sequenom’s counsel has already had access to the declaratory judgment plaintiff’s most  
 18 valued proprietary information for more than six months. Allowing the attorneys to use this  
 19 information in an IPR—even if only inadvertently—would prejudice Natera, DDC, and *Ariosa*.  
 20 Justice requires enforcement of the negotiated and agreed-upon protective order.

21 Sequenom’s request is not only substantively meritless, it should be rejected on procedural  
 22 grounds alone. First, although Sequenom seeks to modify the protective order in three (perhaps  
 23 four) related cases, Sequenom never filed or served anything in the other cases. Second, this is the  
 24 second time that Sequenom has raised this exact issue with the Court. After a previous letter brief,  
 25 and argument at the April 19, 2013 status conference failed to persuade the Court, Sequenom filed  
 26 the instant motion on May 1, 2013. This District has adopted rules to prevent parties from  
 27 repeatedly bringing meritless requests and arguments. *See* Civil L.R. 7-9. Sequenom chose to

BARTKOZANKEL BUNZEL  
BARTKOZANKEL BUNZEL MILLER  
One Embarcadero Center, Suite 800  
San Francisco, CA 94111  
Phone (415) 956-1900 • Fax (415) 956-1152

1 ignore these provisions and file its redundant motion. Both the lack of substantive merit and  
 2 procedural impropriety justify denial of Sequenom's dubious motion.

3 **Argument**

4 **I. Natera Joins in and Incorporates Ariosa's Opposition to the Motion to Clarify.**

5 Ariosa has submitted a detailed opposition to Sequenom's Motion to Clarify addressing the  
 6 factual background and appropriate law. (*Ariosa* Dkt. No. 187 ("Opposition").) Rather than  
 7 reiterate the same arguments, Natera and DDC hereby join in Ariosa's Opposition and incorporate  
 8 it as set forth herein.

9 **II. Sequenom's Motion Provides No Basis for Altering the Protective Order in *Natera v.***  
 10 **Sequenom**

11 Sequenom filed its motion in *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, Case No. 11-cv-  
 12 6391 SI. (*Ariosa* Dkt. 175.) However, Sequenom apparently seeks to modify the protective orders  
 13 in *Natera v. Sequenom*, Case No. 12-cv-132 SI and *Verinata Health, Inc. v. Sequenom, Inc.*, Case  
 14 No. 12-cv-865 SI. (*Ariosa* Dkt. 175, Notice of Motion (recognizing separate protective orders in  
 15 these cases).) While these cases have been related to the *Ariosa* case, they are not consolidated  
 16 with *Ariosa* and are independent cases. However, Sequenom never properly filed or served  
 17 anything in the *Natera* case (or, to Natera's knowledge, in the *Verinata* case.).

18 Thus, Sequenom seeks modify the Protective Order in *Natera v. Sequenom* without actually  
 19 filing anything or providing notice in the Natera case. This cannot be procedurally proper.<sup>1</sup> If  
 20 Sequenom seeks actions in the *Natera* case, it should act in that case. This is part of a pattern of  
 21 behavior by Sequenom of treating the related cases as one when convenient and then ignoring the  
 22 related cases when desirable. Even if the Court grants Sequenom's motion in *Ariosa*, modification  
 23 of the Protective Order in *Natera v. Sequenom* is not appropriate until, at least, Sequenom properly  
 24 seeks relief in that case.

25  
 26  
 27 <sup>1</sup> Having learned of Sequenom's motion in *Ariosa*, Natera and DDC are responding in both  
 28 the *Ariosa* case and the *Natera* case.

1       **III. Sequenom Failed to Comply with Civil Local Rule 7-9.**

2       Sequenom first raised the issue of modifying the Protective Order with the Court in a letter  
 3 submitted in the related cases on April 12, 2013.<sup>2</sup> (*Ariosa* Dkt. 72.) At an April 19, 2013 status  
 4 conference, the Court denied the request made in the letter brief. (*Ariosa* Dkt. 175, at 7; *Ariosa*  
 5 Dkt. 187, at 3.) Sequenom, uniquely among the parties, takes the position that the Court “invited”  
 6 counsel to submit the instant motion. (*Ariosa* Dkt. 175, at 7.)

7       Civil Local Rule 7-9 applies where a party seeks reconsideration of a ruling by the Court.  
 8 Here, Sequenom requested modification of the protective order and the parties, including  
 9 Sequenom, agree that the Court did not grant that request. Thus, the instant motion should be  
 10 considered a motion for reconsideration. As such, Sequenom should seek leave to file the motion  
 11 and show why the Court’s previous ruling was flawed. (Civil L.R. 7-9(b).) Moreover, Rule 7-9(c)  
 12 prohibits repetition of arguments. Rather than acknowledge that this is a motion to reconsider,  
 13 Sequenom relies upon a purported “invitation” from the Court.

14       In Local Rule 7, this District has adopted a comprehensive system for raising issues with  
 15 the Court. Sequenom has flaunted these rules with its unauthorized letter brief and  
 16 unacknowledged motion to reconsider. On purely procedural grounds, granting Sequenom relief is  
 17 not proper.

18

19       **Conclusion**

20       For the foregoing reasons, Natera and DDC respectfully request that the Court DENY  
 21 Sequenom’s Motion to Clarify, or Alternatively, Modify Protective Order, in its entirety.

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27       <sup>2</sup> The submission of such a letter brief in this context was not consistent with the provisions  
 28 of any Civil Local Rule in this District.

1 DATED: May 15, 2013

2 BARTKO, ZANKEL, BUNZEL & MILLER

3

4 By: /s/ W. Paul Schuck

5 W. Paul Schuck

6 Attorneys for Plaintiff/Counterclaim Defendant  
7 NATERA, INC. and Counterclaim Defendant  
8 DNA DIAGNOSTICS CENTER, INC.

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BARTKO ZANKEL BUNZEL  
BARTKO, ZANKEL, BUNZEL & MILLER  
One Embarcadero Center, Suite 800  
San Francisco, CA 94111  
Phone (415) 956-1900 • Fax (415) 956-1152